

IC 24-4.5-7

Chapter 7. Small Loans

IC 24-4.5-7-101

Citation

Sec. 101. This chapter shall be known and may be cited as Uniform Consumer Credit Code — Small Loans.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-102

Applicability

Sec. 102. (1) Except as otherwise provided, all provisions of this article applying to consumer loans apply to small loans, as defined in this chapter.

(2) This chapter applies to:

(a) all persons licensed to make loans under this article or to any person who facilitates, enables, or acts as a conduit for any lender who is or may be exempt from licensing under IC 24-4.5-3-502;

(b) a bank, savings association, credit union, or other state or federally regulated financial institution except those that are specifically exempt regarding limitations on interest rates and fees; or

(c) a person, if the department determines that a transaction is:

(i) in substance a disguised loan; or

(ii) the application of subterfuge for the purpose of avoiding this chapter.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-103

Definitions

Sec. 103. The following definitions apply to this chapter:

"Small loan" Section 7-104

"Principal" Section 7-105

"Check" Section 7-106

"Renewal" Section 7-107

"Consecutive small loan" Section 7-108

"Paid in full" Section 7-109

"Monthly net income" Section 7-110

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-104

Small loan

Sec. 104. "Small loan" means a loan:

(a) with a principal loan amount that is at least fifty dollars (\$50) and not more than five hundred dollars (\$500); and

(b) in which the lender holds the borrower's check or receives the borrower's written authorization to debit the borrower's account under an agreement, either express or implied, for a specific period before the lender:

- (i) offers the check for deposit or presentment; or
 - (ii) exercises the authorization to debit the borrower's account.
- As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.17.*

IC 24-4.5-7-105

Principal

Sec. 105. "Principal" means the total of:

- (a) the net amount paid to, receivable by, or paid or payable from the account of the borrower; and
- (b) to the extent that the payment is deferred, the additional charges permitted by this chapter that are not included in subdivision (a).

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.18.

IC 24-4.5-7-106

Check

Sec. 106. For purposes of this chapter, "check" has the meaning set forth in IC 26-1-3.1-104.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-107

Renewal

Sec. 107. "Renewal" refers to a small loan that takes the place of an existing small loan by:

- (a) renewing;
- (b) repaying;
- (c) refinancing; or
- (d) consolidating;

a small loan with the proceeds of another small loan made to the same borrower by a lender.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.19.

IC 24-4.5-7-108

Consecutive small loan

Sec. 108. "Consecutive small loan" means a new small loan agreement that the lender enters with the same borrower not later than seven (7) calendar days after a previous small loan made to that borrower is paid in full.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.20.

IC 24-4.5-7-109

Paid in full

Sec. 109. "Paid in full" means the termination of a small loan through:

- (1) the payment of the borrower's check by the drawee bank or authorized electronic transfer;
- (2) the return of a check to a borrower who redeems it for consideration;
- (3) the authorized debiting of the borrower's account; or
- (4) any other method of termination.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.21.

IC 24-4.5-7-110

Monthly gross income

Sec. 110. "Monthly gross income" means the income received by the borrower in the thirty (30) day period preceding the borrower's application for a small loan under this chapter and exclusive of any income other than regular gross pay received, or as otherwise determined by the department.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.22.

IC 24-4.5-7-201

Finance charges

Sec. 201. (1) Finance charges on the first two hundred fifty dollars (\$250) of a small loan are limited to fifteen percent (15%) of the principal.

(2) Finance charges on the amount of a small loan greater than two hundred fifty dollars (\$250) and less than or equal to four hundred dollars (\$400) are limited to thirteen percent (13%) of the amount over two hundred fifty dollars (\$250) and less than four hundred dollars (\$400).

(3) Finance charges on the amount of the small loan greater than four hundred dollars (\$400) and less than or equal to five hundred dollars (\$500) are limited to ten percent (10%) of the amount over four hundred dollars (\$400) and less than five hundred dollars (\$500).

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.23.

IC 24-4.5-7-202

Fee

Sec. 202. (1) Notwithstanding any other law, the only fee that may be contracted for and received by the lender on a small loan is a charge, not to exceed twenty dollars (\$20), for each:

- (a) return by a bank or other depository institution of a:
 - (i) dishonored check;
 - (ii) negotiable order of withdrawal; or
 - (iii) share draft issued by the borrower; or
- (b) time an authorization to debit the borrower's account is dishonored.

This additional charge may be assessed one (1) time regardless of how many times a check or an authorization to debit the borrower's account may be submitted by the lender and dishonored.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.24.

IC 24-4.5-7-301

Disclosures; informational brochure

Sec. 301. (1) For purposes of this section, the lender shall disclose to the borrower to whom credit is extended with respect to a small loan the information required by the Federal Consumer Credit Protection Act.

(2) In addition to the requirements of subsection (1), the lender must conspicuously display in bold type a notice to the public both in the lending area of each business location and in the loan documents the following statement:

"WARNING: A small loan is not intended to meet long term financial needs. A small loan should be used only to meet short term cash needs. The cost of your small loan may be higher than loans offered by other lending institutions. Small loans are regulated by the State of Indiana Department of Financial Institutions.

A borrower may rescind a small loan without cost not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a borrower must inform the lender that the borrower wants to rescind the small loan, and the borrower must return the cash amount of the principal of the small loan to the lender."

(3) The statement required in subsection (2) must be in:

- (a) 14 point bold face type in the loan documents; and
- (b) not less than one (1) inch bold print in the lending area of the business location.

(4) When a borrower enters into a small loan, the lender shall provide the borrower with a pamphlet approved by the department that describes:

- (a) the availability of debt management and credit counseling services; and
- (b) the borrower's rights and responsibilities in the transaction.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.25.

IC 24-4.5-7-401

Term

Sec. 401. (1) A small loan may not be made for a term of less than fourteen (14) days.

(2) After the borrower's fifth consecutive small loan, another small loan may not be made to that borrower within seven (7) days after the due date of the fifth consecutive small loan. After the borrower's fifth consecutive small loan, the balance must be paid in full. However, the borrower and lender may agree to enter into a simple interest loan, payable in installments, under IC 24-4.5-3 within seven (7) days after the due date of the fifth consecutive small loan.

As added by P.L.38-2002, SEC.1. Amended by P.L.258-2003, SEC.2; P.L.73-2004, SEC.26.

IC 24-4.5-7-402

Requirements and conditions

Sec. 402. (1) A lender is prohibited from making a small loan to a borrower if the total payable amount of the small loan exceeds fifteen percent (15%) of the borrower's monthly gross income.

(2) A small loan may be secured by only one (1) check or authorization to debit the borrower's account per small loan. The check or electronic debit may not exceed the amount advanced to or

on behalf of the borrower plus loan finance charges contracted for and permitted.

(3) A borrower may make partial payments in any amount on the small loan without charge at any time before the due date of the small loan. After each payment is made on a small loan, whether the payment is in part or in full, the lender shall give a signed and dated receipt to the borrower making a payment showing the amount paid and the balance due on the small loan.

(4) The lender shall provide to each borrower a copy of the required loan documents before the disbursement of the loan proceeds.

(5) A borrower may rescind a small loan without cost not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a borrower must:

- (a) inform the lender that the borrower wants to rescind the small loan; and
- (b) return the cash amount of the principal of the small loan to the lender.

(6) A lender shall not enter into a renewal with a borrower. If a loan is paid in full, a subsequent loan is not a renewal.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.27.

IC 24-4.5-7-403

Security for loan

Sec. 403. A small loan may not be secured by personal property other than a check or electronic debit.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-404

Restrictions, verification, and excess finance charges

Sec. 404. (1) As used in this section, "commercially reasonable method of verification" means one (1) or more private consumer credit reporting services that the department determines to be capable of providing a lender with adequate verification information necessary to ensure compliance with subsection (4).

(2) With respect to a small loan, no lender may permit a person to become obligated under more than one (1) loan agreement with the lender at any time.

(3) A lender shall not make a small loan that, when combined with another outstanding small loan owed to another lender, exceeds a total of five hundred dollars (\$500) when the face amounts of the checks written or debits authorized in connection with each loan are combined into a single sum. A lender shall not make a small loan to a borrower who has two (2) or more small loans outstanding, regardless of the total value of the small loans.

(4) A lender complies with subsection (3) if the borrower represents in writing that the borrower does not have any outstanding small loans with the lender, another lender, an affiliate of the lender or another lender, or a separate entity involved in a business association with the lender or another lender in making small loans,

and the lender independently verifies the accuracy of the borrower's written representation through a commercially reasonable method of verification. A lender's method of verifying whether a borrower has any outstanding small loans will be considered commercially reasonable if the method includes a manual investigation or an electronic query of:

- (a) the lender's own records, including both records maintained at the location where the borrower is applying for the transaction and records maintained at other locations within the state that are owned and operated by the lender; and
- (b) available third party databases.

(5) The department shall monitor the effectiveness of private consumer credit reporting services in providing the verification information required under subsection (4). If the department determines that one (1) or more commercially reasonable methods of verification are available, the department shall:

- (a) provide reasonable notice to all lenders identifying the commercially reasonable methods of verification that are available; and
- (b) require each lender to use one (1) of the identified commercially reasonable methods of verification as a means of complying with subsection (4).

(6) The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for purposes of the provisions concerning effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions concerning civil actions by the department (IC 24-4.5-6-113).

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.28.

IC 24-4.5-7-405

Conducting other business

Sec. 405. (1) This section does not apply to a business that is licensed by the department for a purpose other than consumer loans.

(2) A lender shall not conduct the business of making small loans under this chapter within an office, suite, room, or place of business where another business is solicited or engaged unless the lender obtains a written opinion from the director of the department that the other business would not be contrary to the best interests of consumers.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-406

Limitation on other default charges

Sec. 406. An agreement with respect to a small loan may not provide for charges as a result of default by the borrower other than those authorized by this chapter. A provision in violation of this section is unenforceable.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.29.

IC 24-4.5-7-407 Repealed

(Repealed by P.L.73-2004, SEC.48.)

IC 24-4.5-7-408

Repealed

(Repealed by P.L.73-2004, SEC.48.)

IC 24-4.5-7-409

Restrictions, penalties, and enforcement

Sec. 409. (1) This section applies to licensees and unlicensed persons.

(2) The following apply to small loans only when a check or an authorization to debit a borrower's account is used to defraud another person:

- (a) IC 26-1-3.1-502.5 (surcharge after dishonor).
- (b) IC 26-2-7 (penalties for stopping payments or permitting dishonor of checks and drafts).
- (c) IC 34-4-30 (before its repeal).
- (d) IC 34-24-3 (treble damages allowed in certain civil actions by crime victims).
- (e) IC 35-43-5 (forgery, fraud, and other deceptions).
- (f) IC 24-4.5-3-404 (attorney's fees) does not apply to a small loan.

(3) A contractual agreement in a small loan transaction must include the language of subsection (2) in 14 point bold type.

(4) A person who violates this chapter:

- (a) is subject to a civil penalty up to two thousand dollars (\$2,000) imposed by the department;
- (b) is subject to the remedies provided in IC 24-4.5-5-202;
- (c) commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5;
- (d) has no right to collect, receive, or retain any principal, interest, or other charges from a small loan; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation; and
- (e) is liable to the borrower for actual damages, statutory damages of two thousand dollars (\$2,000) per violation, costs, and attorney's fees; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation.

(5) The department may sue:

- (a) to enjoin any conduct that constitutes or will constitute a violation of this chapter; and
- (b) for other equitable relief.

(6) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a borrower. A borrower is not required to exhaust any administrative remedies under this section or any other applicable law.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.30.

IC 24-4.5-7-410

Prohibitions

Sec. 410. A lender making small loans shall not commit nor cause to be committed any of the following acts:

- (a) Threatening to use or using the criminal process in any state to collect on a small loan.
- (b) Threatening to take action against a borrower that is prohibited by this chapter.
- (c) Making a misleading or deceptive statement regarding a small loan or a consequence of taking a small loan.
- (d) Contracting for and collecting attorney's fees on small loans made under this chapter.
- (e) Altering the date or any other information on a check or an authorization to debit the borrower's account held as security.
- (f) Using a device or agreement that the department determines would have the effect of charging or collecting more fees, charges, or interest than allowed by this chapter, including, but not limited to:
 - (i) entering a different type of transaction with the borrower;
 - (ii) entering into a sales/leaseback arrangement;
 - (iii) catalog sales;
 - (iv) entering into transactions in which a customer receives a purported cash rebate that is advanced by someone offering Internet content services, or some other product or service, when the cash rebate does not represent a discount or an adjustment of the purchase price for the product or service; or
 - (v) entering any other transaction with the borrower that is designed to evade the applicability of this chapter.
- (g) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a small loan.
- (h) Charging to cash a check representing the proceeds of a small loan.
- (i) Except as otherwise provided in this chapter:
 - (i) accepting the proceeds of a new small loan as payment of an existing small loan provided by the same lender; or
 - (ii) renewing, refinancing, or consolidating a small loan with the proceeds of another small loan made by the same lender.
- (j) Including any of the following provisions in a loan document:
 - (i) A hold harmless clause.
 - (ii) A confession of judgment clause.
 - (iii) A mandatory arbitration clause, unless the terms and conditions of the arbitration have been approved by the director of the department.
 - (iv) An assignment of or order for payment of wages or other compensation for services.
 - (v) A provision in which the borrower agrees not to assert a claim or defense arising out of contract.
 - (vi) A waiver of any provision of this chapter.
- (k) Selling insurance of any kind in connection with the making or collecting of a small loan.
- (l) Entering into a renewal with a borrower.

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.31.

IC 24-4.5-7-411

Exemption of finance charges

Sec. 411. Finance charges made in compliance with this chapter are exempt from IC 24-4.5-3-508 and IC 35-45-7.

As added by P.L.38-2002, SEC.1.

IC 24-4.5-7-412

Endorsement of check

Sec. 412. Upon the receipt of a check from a borrower for a small loan, the lender shall immediately stamp the back of the check with an endorsement that states:

"This check is being negotiated as part of a small loan under IC 24-4.5, and any holder of this check takes it subject to the claims and defenses of the maker."

As added by P.L.38-2002, SEC.1. Amended by P.L.73-2004, SEC.32.

IC 24-4.5-7-413

Bond requirement

Sec. 413. (1) A person engaged in making small loans under this chapter shall post a bond to the department in the amount of fifty thousand dollars (\$50,000) for each location where small loans will be made, up to a maximum bond amount of five hundred thousand dollars (\$500,000).

(2) A bond posted under subsection (1) must continue in effect for two (2) years after the lender ceases operation in Indiana. The bond must be available to pay damages and penalties to a consumer harmed by a violation of this chapter.

As added by P.L.38-2002, SEC.1. Amended by P.L.258-2003, SEC.3.

IC 24-4.5-7-414

Rulemaking authority

Sec. 414. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.38-2002, SEC.1.